

### REMARKS

The Examiner rejected claims 1-3 and 6-10 under 35 U.S.C. § 102(b) as being anticipated by Parker (U.S. Patent No. 5,822,520); rejected claims 4 and 5 under 35 U.S.C. § 103(a) as being unpatentable over Parker in view of Warren (U.S. Patent No. 6,381,721).

Claims 1-10 are pending in the application.

#### Rejection of Claims 1-3 and 6-10 under 35 U.S.C. § 102(b)

The Examiner rejected claims 1-3 and 6-10 under 35 U.S.C. § 102(b) as being anticipated by Parker.

Regarding claims 1 and 6, Parker does not teach or suggest “a port that allows communication by a test apparatus directly with any layer [of a communication system] that is higher than a first layer of the functional layers without the communication previously having to pass through the first layer.” The Examiner points to Figures 6-9, but Applicant respectfully disagrees for the following reasons:

Figure 9 merely illustrates a “virtual network, useful, e.g., simulating.” (column 9, lines 57-58). There is no physical “communication system” under test, and hence there can be no “port that allows communication . . . directly with any layer [of a communication system].”

Figure 6 illustrates the test an individual protocol layer—network layer 614. (column 8, lines 29-31) However, a careful reading of Parker reveals that Figure 6 is merely another simulation. See column 3, lines 62-64 (emphasis added): “FIG. 6 is an illustration of the employment of the packet shell of the invention to simulate the operation of a network protocol layer.” Indeed, Parker does not teach that network layer 614 exists in an external device. Rather, the testing of Figure 6 occurs entirely within one “computer system.” (column 8, lines 32 and 51: “The computer system” implies that there is only one computer system.) Again, there is no physical “communication system” under test, and hence there can be no “port that allows communication . . . directly with any layer [of a communication system].”

Figure 7 is analogous to Figure 6 except that it illustrates the test of multiple layers instead of an individual layer. (column 9, lines 10-11)

Figure 8 is closest to the context of Applicant’s claimed invention in that it illustrates the test of a remote computer 814, i.e., a “communication system.” However, Parker connects to

remote computer 814 via the physical or first layer (column 9, lines 44-45: “over a computer network 816 (e.g., an ethernet network)”), not “a port that allows communication . . . without the communication previously having to pass through the first layer.”

For these reasons, claims 1 and 6 are not anticipated by Parker. Accordingly, Applicant requests that the rejection of claims 1 and 6 under 35 U.S.C. § 102(b) be withdrawn.

Claims 2-3 and 7-10 are allowable because they depend from claims 1 and 6 respectively, both of which are allowable for the reasons discussed above. Accordingly, Applicant requests that the rejection of claims 2-3 and 7-10 under 35 U.S.C. § 102(b) be withdrawn.

#### Rejection of Claims 4 and 5 under 35 U.S.C. § 103(a)

The Examiner rejected claims 4 and 5 under 35 U.S.C. § 103(a) as being unpatentable over Parker in view of Warren.

Claims 4 and 5 are allowable because they depend from claim 1, which is allowable for the reasons discussed above. Furthermore, the addition of Warren to Parker’s Figures 6-9 does not teach or suggest “a port that allows communication by a test apparatus directly with any layer [of a communication system] . . .” for the reasons discussed above.

For these reasons, claims 4 and 5 are not rendered obvious by Parker in view of Warren. Accordingly, Applicant requests that the rejection of claims 4 and 5 under 35 U.S.C. § 103(a) be withdrawn.

Conclusion

In view of the foregoing remarks, allowance of claims 1-10 is urged, and such action and the issuance of this case are requested.

Respectfully submitted,

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